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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,762	02/27/2001	Hermann Winner	R 34231	6339

7590 08/13/2004  
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EXAMINER
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HO, HA DINH

ART UNIT	PAPER NUMBER
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3681

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/763,762

Applicant(s)

WINNER ET AL.

Examiner

Ha D. Ho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-11, 13, 14, 17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-11, 13, 14, 17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. This Office Action is responsive to Applicant's Amendment filed on 6/14/04. Claims 19 and 20 have been amended accordingly. Claims 9-11, 13-14, 17 and 19-20 are currently pending.

#### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 9-11, 13-14, 17 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 13 recites the limitations "the engine control" and "the braking control" in line 8. There is insufficient antecedent basis for these limitations in the claim. It is suggested to change "the engine" to --an engine--, and change "the braking" to --a braking--. Similarly, in line 9 of claim 14, in line 6 of claim 19, and in line 7 of claim 20, it is suggested to change "the engine" to --an engine--, and change "the braking" to --a braking--.
- In claim 13, line 15, the recitation of "an automatic transmission" constitutes a double inclusion since "an automatic transmission" was previously recited in line 4. It is suggested to change "an" to --said--. Similarly, in line 16 of claim 14, it is suggested to change "an" to --said--.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9-11, 13-14, 17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bota (US 5,052,531) in view of Butsuen et al (US 5,420,792).

Regarding claims 13, 14 and 19-20, Bota discloses an arrangement that would perform a method for ensuring standstill of a vehicle in combination with an adaptive road speed controller (75) of the vehicle, the vehicle including a drive train (5) incorporating an automatic transmission which provides and interrupts a force flow in the drive train, the method comprising the steps of:

building up a braking force in the manner of a parking brake function when the standstill of the vehicle is detected (i.e., the brake oil pressure is generated by the master cylinder 83 when the brake switch is ON and where the vehicle stops, see col. 5, lines 14-52),

interrupting force flow in a drive train by controlling the automatic transmission into a neutral position (see col. 1, lines 50-52),

detecting a start-drive command of the driver when an operator-controlled element (i.e., the shift lever) is actuated (i.e., when the driver operates the shift lever from neutral to drive range (see col. 6, lines 51-62),

disengaging the parking brake function and controlling automatic transmission out of the neutral position when said start-drive command is detected (see col. 6, lines 51-62), and

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activating the adaptive road speed controller (75) in response to an activation of the operator-controlled element (i.e., the shift lever) by the driver (see col. 6, lines 51-62).

Bota shows the brake being activated when the operator presses the brake pedal. Bota does not show measuring the distance of the vehicle to an object ahead of the vehicle and the speed of the vehicle, and activating/controlling the braking control in dependence upon the distance and speed of the vehicle and a desired value so that the vehicle can be braked to standstill.

Butsuen et al disclose an automatic brake control system comprising a control unit (11), a radar unit (10) for measuring the distance of the vehicle to an object ahead of the vehicle, a velocity sensor (6) for measuring the speed of the vehicle, and the brake being controlled in dependence upon the distance (L), the speed (V1) and a desired value (V2) so that the vehicle can be braked to standstill (see Fig. 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vehicle of Bota to have an automatic brake control system as taught by Butsuen et al (as set forth above) in order to safely avoid the obstacle or the vehicle ahead (col. 1, lines 17-20 and 41-44).

Note that the modified vehicle would still perform all the steps above as taught by Bota. Further, Butsuen et al teach that the driver can manually operate the brakes even in the automatic braking condition (col. 6, lines 63-65).

Regarding claim 9, Bota shows the vehicle including a supply voltage unit (i.e., brake switch 91) and electrical systems (i.e., electrical wire circuit). Bota'531 discloses that the brake

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is maintained even if a driver releases the brake pedal (see abstract), i.e., the voltage of the electrical systems (pedal 82 and brake switch 91) is switched off (brake pedal releases).

Regarding claim 10, Bota'531 discloses that the brake is on until the starting gear position (corresponding to claimed start-drive command) is formed. The modified vehicle would have the starting gear position when the actual distance L is greater than the predetermined distance L3.

Regarding claim 11, Bota'531 shows controlling the gear position to neutral (see col. 5, lines 45-48, and step S5 in Fig. 4) after detection of standstill (i.e., car velocity = 0, and brake switch on, see step S2 and S4 in Fig. 4).

Regarding claim 17, Bota'531 shows the operator-controlled element (i.e., the shift lever) be a switch of the adaptive road speed controller (75) (i.e., when the shift lever is switched from N range to D range, the control valve 75 is turned off, see col. 6, line 51-55).

### ***Response to Arguments***

6. Applicant's arguments filed 6/14/04 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention (e.g., *an automatic start drive of the vehicle is not disclosed by Bota*, page 12, lines 4-5, and *Butsuen does not disclose an automatic renewed start drive of the vehicle*, page 12, lines 15-16), it is noted that the features upon which applicant relies (i.e., ***an automatic start drive*** and ***an automatic renewed start drive of the vehicle***) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the

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specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Note that claimed invention requires to *disengage the brake and control the automatic transmission out of the neutral position when the start-drive command is detected*. This feature is shown by Bota (see paragraph 5 above).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### ***Communication***

8. Submission of your response by facsimile transmission is encouraged. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly

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in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see M.P.E.P. 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P. 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to  
the Patent and Trademark Office on \_\_\_\_\_

(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_  
(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Ho whose telephone number is (703) 305-0738. The examiner can normally be reached on Monday-Friday from 7:30 A.M. to 5:00 P.M. Eastern Standard Time. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Mr. Charles Marmor, can be reached at (703) 308-0830. Any inquiry of a general nature or relating to the status of this application or proceeding should directed to the Group receptionist whose telephone number is (703) 308-2168.

HDH  
(703) 305-0738  
August 11, 2004

*Hc Ho*  
**HAHO**  
**PRIMARY EXAMINER**

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8/11/04